

Message Text

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ORIGIN ARA-10

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DRAFTED BY ARA/CEN/H:PHWACKERBARTH:DM

APPROVED BY ARA-LA/CEN:DAVID LAZAR

L/ARA:DGANTZ

AID/LA/GC:JMARQUEZ

EIB/IFD/OIA:TBRODERICK (INFO)

TREASURY:MR. VILLAMIL (INFO)

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P 112252Z FEB 75

FM SECSTATE WASHDC

TO AMEMBASSY SAN SALVADOR PRIORITY

AMEMBASSY GUATEMALA

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E.O. 11652: N/A

TAGS: EINV,ETRN,ES

SUBJECT: IRCA - MEETING WITH WEBER

1. PRESIDENT AND GENERAL COUNSEL ABRAHAM WEBER MET WITH ARA/CEN DIRECTOR DAVID LAZAR, ASSISTANT LEGAL ADVISER DAVID GANTZ (L/ARA), JOAQUIN MARQUEZ (AID/LA/GC) AND PAUL WACKERBARTH (ARA/CEN/ES) AT WEBER'S REQUEST ON FEBRUARY 6. WEBER STATED HIS PURPOSE WAS TO DETERMINE WHAT CHANNELS OF REDRESS WERE OPEN TO HIM IN DEALING WITH THE GOES ON IRCA. HE RECALLED HIS EXPERIENCE IN GUATEMALA (SEE PARA 6) AND TOLD HOW IT SEEMED EL SALVADOR WAS FOLLOWING SIMILAR COURSE AS IT CANCELLED HIS CONCESSION ON OCTOBER 3 ON WHAT HE BELIEVED WERE FLIMSY CHARGES OF NON-SERVICE THROUGH SUPERANNUATION OF THE CONCESSION, WHICH HAS THE EFFECT

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OF RAILROAD TAKEOVER BY GOES. SUBSEQUENTLY, GOES TOOK

OVER PROPERTIES HE BELIEVED SEPARATE FROM RAILROAD SUCH AS CUTUCO PORT FACILITIES AND REAL ESTATE NEAR SAN SALVADOR TERMINAL. HE TOLD US THAT HIS LAWYER IN EL SALVADOR ADVISED HIM THAT HE WAS NOT ENTITLED TO CHALLENGE THE CONSTITUTIONALITY OF THE DECREE TAKING OVER IRCA IN SALVADORAN COURTS BECAUSE HE WAS NOT A CITIZEN OF EL SALVADOR. HE OBSERVED THAT EVEN IF HE HAD ACCESS TO SALVADORAN COURTS HE DOUBTED THAT HE WOULD GET FAIR HEARING IN A COMPLAINT AGAINST THE GOVERNMENT.

(WE DEMURRED EACH TIME HE STARTED OFF IN THIS DIRECTION.) HE DESCRIBED ASSESSMENT OF WHARFAGE FEES RETROACTIVE TO 1938 AS AN EXAMPLE OF TREATMENT HE COULD EXPECT FROM GOES LEGAL SYSTEM. THEREFORE, HE WAS EXPLORING WHAT POSSIBLE ACTION COULD BE TAKEN THROUGH DIPLOMATIC CHANNELS.

2. WE ADVISED HIM THAT THE DEPARTMENT IS CONCERNED WITH AND HAS A DEFINITE ROLE IN ASSISTING U.S. BUSINESSMEN IN DISPUTES WITH FOREIGN GOVERNMENTS SUCH AS THIS ONE. WE DESCRIBED THAT ROLE AS ATTEMPTING TO ASSURE FAIR TREATMENT UNDER STANDARDS OF INTERNATIONAL LAW. IN THIS CASE, WE POINTED OUT THERE COULD BE NO QUESTION OF THE GOES RIGHT TO CANCEL THE CONCESSION BUT WE ALSO STATED OUR SUPPORT OF IRCA'S RIGHT TO A FAIR HEARING ON THE ISSUE OF COMPENSATION. THE FIRST STEP WE RECOMMENDED WAS TO REVIEW ACTIONS TAKEN IN SEEKING LOCAL REMEDIES. WE NOTED THAT IN THIS INSTANCE IT WAS UNCLEAR TO US WHAT LOCAL REMEDIES WERE AVAILABLE AND WHAT EFFORTS IRCA'S ATTORNEYS IN EL SALVADOR HAD MADE TO SEEK LEGAL REDRESS IN EL SALVADOR.

3. WEBER REPLIED THAT HE TOO WAS UNSURE AS TO PRECISELY WHAT ACTIONS HIS ATTORNEYS IN EL SALVADOR HAD TAKEN AND WHAT LEGAL REMEDIES WERE OPEN TO HIM. HE SUGGESTED THAT HE WOULD ASK GUILLERMO TRIGUEROS, HIS ATTORNEY IN EL SALVADOR TO REVIEW THESE REPRESENTATIONS WITH APPROPRIATE EMBASSY OFFICERS. WE AGREED THAT THIS WAS A GOOD IDEA AND TOLD HIM THAT WE WOULD INFORM THE EMBASSY. (WE ASSUME TRIGUEROS WILL CONTACT EMBASSY IN THE NEAR FUTURE.)

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4. WHEN ASKED WHAT HE BELIEVED THE VALUE OF IRCA TO BE AT PRESENT, WEBER WAS UNSPECIFIC AND SOMEWHAT EVASIVE NOTING THAT IT IS DIFFICULT TO ASSESS THE VALUE OF A RAILROAD. HE SAID BOOK VALUE MAY BE DOLS. 50 MILLION. HE RECALLED HIS MAY 30 OFFER SUBMITTED TO GOES EMBASSY HERE IN WHICH HE SET DOLS. 2 MILLION PLUS ASSUMPTION OF LIABILITIES AS SELLING PRICE.

5. AT CONCLUSION OF MEETING, WEBER NOTED THAT HE HAD BEEN VERY LOW KEY IN APPROACH THUS FAR. HE STATED HIS BELIEF THAT THIS WOULD GIVE DEPARTMENT FLEXIBILITY IN HANDLING THE MATTER. THE IMPLICATION WAS CLEAR THAT HE MAY CHANGE THIS TACTIC IF HE BELIEVES CASE NOT GOING WELL.

6. IN PRESENTING BACKGROUND, WEBER CITED HISTORY OF TAKEOVER OF IRCA IN GUATEMALA ALLEGING THAT THE GOG HAD PRESSURED IRCA INTO ACCEPTING A HIGHLY CONDITIONAL AND DISADVANTAGEOUS LOAN AND THEN SEIZED RAILROAD WHEN IRCA DEFAULTED ON PAYMENTS. HE ADDED THAT WHEN GOG REALIZED THAT FORCLOSURE DID NOT ENCOMPASS ALL IRCA PROPERTIES IN GUTEMALA, IT TOOK REMAINDER ON WHAT HE FELT WERE SPURIOUS CHARGES OF NON-SERVICE. WHEN ASKED IF HE STILL WAS PRESSING CLAIM AGAINST GOG, WEBER REPLIED VAGUELY THAT HIS LAWYERS IN GUATEMALA WERE STILL WORKING ON THE CASE.

7. IN VIEW OF RECENT INFORMAL DISCUSSION OF IRCA ISSUE WITH FOMIN BORGONOVO HERE (JAN 30) IN WHICH WE EMPHASIZED ONCE AGAIN THE IMPORTANCE OF IRCA HAVING ITS "DAY IN COURT". WE BELIEVE NEXT APPROPRIATE STEP IS TO WAIT FOR TRIGUERO'S PRESENTATION OF ACTIONS TAKEN TO EXPLORE AVAILABILITY OF LOCAL REMEDIES. WE CONTINUE TO FOLLOW CASE CLOSELY BOTH BECAUSE OF OUR INTEREST IN SEEING THAT A US CITIZEN IS NOT BEING TREATED UNFAIRLY AND BECAUSE OF POTENTIAL PROBLEMS IT PRESENTS UNDER HICKENLOOPER AND GONZALEZ AMMENDMENTS TO FOREIGN ASSISTANCE ACT AND NOW ARTICLE V OF TRADE BILL. FOR YOUR INFORMATION IN A RECENT REPORT SENT TO THE CONGRESS REGARDING ELIGIBILITY TO PARTICIPATE IN THE TRADE BILL'S GSP PROVISIONS EL SALVADOR WAS INCLUDED ON A LIST OF COUNTRIES WHERE POTENTIAL PROBLEMS UNDER ARTICLE V

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EXIST, BUT WAS NOT CONSIDERED INELIGIBLE IN THE ABSENCE OF ANY EVIDENCE THAT OBLIGATIONS UNDER INTERNATIONAL LAW HAVE NOT BEEN MET. INGERSOLL

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